

Claimant appeared along with her attorney, Gregory J. McDonald, of Abilene, Kansas. Respondent and its insurance carrier appeared by their attorney, Ross A. Hollander, of Wichita, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge, including the transcript of the preliminary hearing of November 12, 1993, and the exhibits attached thereto, along with medical records from Dr. James Shafer attached to claimant's seven day demand letter.

ISSUES

The claimant appeals the Preliminary Hearing Order and finding of the Administrative Law Judge that claimant failed to prove that her alleged accident and injury arose out of and in the course of her employment with the respondent. The issue now before the Appeals Board is whether claimant sustained a compensable work related accident on or about July 23, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Appeals Board affirms the Order of the Administrative Law Judge and finds that the evidence presented to date fails to establish that claimant has sustained a work related injury arising out of and in the course of her employment with the respondent.

The testimony of both Laura Lively and Twila Cruse establish that claimant's back was hurting prior to her alleged accident on July 23, 1993. Both of these witnesses deny that claimant told them that she injured her back lifting a patient at the nursing home. Both witnesses also testified that claimant complained of a sore back before the alleged date of accident as a result of non-work related activities.

Claimant testified that she immediately advised her immediate supervisor, Laura Lively, on July 23, 1993, that she hurt her back lifting a patient. Respondent's attendance records introduced into evidence indicate that Ms. Lively was not working that evening.

Claimant's testimony was further rebutted by the records of the chiropractor she consulted on August 3, 1993. On the information sheet prepared by claimant for her chiropractor, claimant did not fill in the blank where she was asked if her injury was work related. In the blank where she was asked if she had reported the injury to her employer, claimant answered, "No."

Based upon the record as a whole, the Appeals Board finds that the evidence presented to date fails to establish that claimant has sustained a compensable, work related accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Order of Administrative Law Judge George R. Robertson dated November 15, 1993 is affirmed; and that this proceeding be, and hereby is remanded to the Administrative Law Judge for additional proceedings herein as the parties may require.

IT IS SO ORDERED.

Dated this ____ day of February, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Gregory J. McDonald, P.O. Box 609, Abilene, Kansas 67410-0609
Ross A. Hollander, 500 North Market, Wichita, Kansas 67214
George R. Robertson, Administrative Law Judge
George Gomez, Director